

Freeman, Susan


From: Kahn, Michael [mkahn@Blackwellsanders.com]
Sent: Thursday, September 20, 2007 10:55 AM
To: Freeman, Susan; Ken Levin
Cc: Gerber, Geoffrey; TSalerno@ssd.com; rjmiller@BryanCave.com
Subject: Gaiman/McFarlane

Dear Susan and Ken --

Following up on my telephone conversation yesterday with Ken, I thought the most efficient way to respond on the various topics we discussed would be by this email instead of separate calls to you, Ken, and Phoenix counsel for Todd McFarlane and the Debtor.

1. **Items in Dispute re "Derivative" Issue.** Ken asked me which comic books and other items were included within the "derivative character" dispute. I have confirmed that they are the items listed in the table on pages 8 and 9 of my June 1, 2007 letter to you both.
2. **Options Going Forward.** The document dispute arose in the context of the alternative dispute resolution procedure that the parties refer to as the Protocol. You had requested the disputed items identified in paragraph #1, above, we objected that they were outside the judgment and thus beyond the scope of the accounting, Judge Case declined to rule on the issue and told us we should ask the accountant, and the accountant has now informed us that he is not qualified to rule on the issue and thus will not do so. We continue to believe that these characters are outside the scope of the judgment, and thus the Debtor is thus unwilling to produce anything further without a court order. That leaves us only 2 options:
 - o **Option 1:** Move on to the procedure set forth in paragraph 6 of the Protocol and without the disputed documents. You would still be allowed to review backup documents at the warehouse related to the undisputed publications, toys, etc..
 - o **Option 2:** Terminate the Protocol and attempt to resume the accounting. However, you will first need to find a way to present your claim for additional characters to the Wisconsin district court since, as stated above, the Debtor believes that those other characters are outside the scope of the judgment and, as set forth in our prior motion papers, further believes that Mr. Gaiman has long since waived his right to seek copyright-based profits on those characters by failing to raise the issue with Judge Shabaz under his order requiring such issues to be raised before the commencement of the accounting.
3. **Hague Convention Matters:** Geoff Gerber will contact Susan to bring her up to date on his efforts. Nothing has yet been issued. He has been trying to find contact information on some of the overseas witnesses to see whether we can arrange a voluntary deposition, *i.e.*, whether they will agree to accept service of process. Susan, he will fill you in.

**BLACKWELL
SANDERS**
LLP

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